

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

JUBENAL MEDINA CEBALLOS,
Defendant.

NOS. CR-02-2207-WFN
CR-04-2038-WFN

ORDER

A pretrial conference and motion hearing was held June 2, 2005. The Defendant, who is in custody, was present and represented by Richard Smith; Assistant United States Attorney James Hagarty represented the Government. Pending before the Court was Defendant's Motion to Withdraw Plea of Nolo Contendere, filed April 29, 2005 (CR-02-2207 Ct. Rec. 133). The Defendant seeks to withdraw his plea because the record does not adequately preserve his right to appeal the Court's ruling on his suppression motion. Pursuant to Rule 11 (a)(2) of the Federal Rules of Criminal Procedure, the reservation must have been in writing. The transcript of the Rule 11 plea colloquy demonstrates that the Court misinformed the Defendant regarding the reservation of his right to appeal this issue.

This Order is entered to memorialize the oral rulings of the Court. Accordingly,

IT IS ORDERED that:

1. Defendant's Motion to Withdraw Plea of Nolo Contendere, filed April 29, 2005, **CR-02-2207 Ct. Rec. 133**, is **GRANTED**.

2. Defendant's not guilty plea in Case No. CR-02-2207-WFN is **REINSTATED**.

1 3. The trial date in both matters, CR-02-2207 and CR-04-2038, of June 13, 2005 is
2 **STRICKEN and RESET to July 25, 2005, at 1:00 p.m., in Yakima, Washington.**

3 4. All time from the trial date of June 13, 2005, to the new trial date of July 25,
4 2005, is **EXCLUDED in Case No. CR-04-2038 ONLY**, for speedy trial calculations
5 pursuant to 18 U.S.C. § 3161(h)(8)(A). The Defendant has signed a waiver of his speedy trial
6 rights.

7 5. The final pretrial conference of June 13, 2005 is **STRICKEN and RESET to**
8 **July 25, 2005, at 11:00 a.m., in Yakima, Washington in both matters, CR-02-2207 and**
9 **CR-04-2038.**

10 6. All time from the filing of Defendant's Motion to Withdraw Guilty Plea in
11 CR-02-2207-WFN on April 29, 2005 to the date of the hearing on June 2, 2005 is
12 **EXCLUDED in CR-02-2207 ONLY** for speedy trial calculations pursuant to 18 U.S.C.
13 § 3161(h)(1)(F).

14 7. Trial briefs, motions in limine, requested voir dire, witness and exhibit lists and a
15 set of proposed **JOINT JURY INSTRUCTIONS** shall be filed and served on or before
16 **July 11, 2005.**

17 Jury instructions should only address issues that are unique to this case, and shall
18 include instructions regarding the elements of each claim, any necessary definitions and a
19 proposed verdict form.

20 The Joint Proposed Jury Instructions shall include:

21 (a) The instructions on which the parties agree; and

22 (b) Copies of instructions that are disputed (i.e., a copy of each party's proposed
23 version of an instruction upon which they do not agree). All jury instructions from the most
24 current edition of the Ninth Circuit Manual of Model Jury Instructions may be proposed by
25 number. The submission of the Joint Proposed Jury Instructions will satisfy the requirements
26 of LR 51.1(c).

1 On or before **July 11, 2005** each party shall address any objections they have to
2 instructions proposed by any other party in a memorandum. The parties shall identify the
3 specific portion of any proposed instruction to which they object and shall elaborate the basis
4 for the objection. Objections asserting that an instruction sets forth an incorrect statement of
5 law shall describe the legal authority that supports this objection. Failure to file an objection
6 and supporting argument may be construed as consent to the adoption of an instruction
7 proposed by another party.

8 8. An additional pretrial conference and hearing on motions shall be held **July 14,**
9 **2005, at 10:30 a.m., in Yakima,** Washington.

10 9. Indigent Defendants' requests for issuance of subpoenas and payment of costs and
11 fees for trial witnesses shall be filed no later than ten (10) days before trial, excluding
12 weekends and holidays.

13 The District Court Executive is directed to file this Order and provide copies to
14 counsel.

15 **DATED** this 7th day of June, 2005.

16
17
18 06-03

s/ Wm. Fremming Nielsen
WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE